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The Issue of Restitution for Victims in Trafficking in Indonesia

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Abstract

This paper discusses the problems in the procedure for granting restriction for victims of criminal acts of trafficking which is caused by problems from the aspect of law enforcement and aspects of the laws and regulations that govern it. Even though there is the provision of restitution for the trafficking victims as contained in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and the implementing regulations in Government Regulation Number 44 of 2008 concerning Providing Compensation, Restitution, and Assistance to Witnesses and Victims. However, in the process of granting restitution based on the provisions of this law, there are still many obstacles. Meanwhile, the provision of compensation in general is also regulated in the Criminal Procedure Code. The purpose of this paper is to create legal certainty and justice in terms of providing restitution for victims of trafficking cases. Therefore, this study employed a normative research method and was carried out by using the statutory approach through a review of laws and regulations as well as regulations relating to the issue discussed. Legal materials were obtained from the Criminal Procedure Code, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and Government Regulation Number 44 of 2008 concerning Compensation, Restitution and Assistance to Witnesses and Victims as the primary materials. The secondary legal materials were obtained from books, journals, and other literature. Meanwhile, the data collection technique used is library research by examining legal materials relevant to the research discussion.

Keywords: restitution, victim, trafficking

1. Introduction:

In the framework of law enforcement efforts in trafficking, Indonesia has ratified Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons and its implementing regulations in Government Regulation Number 44 of 2008 concerning Providing Compensation, Restitution, and Assistance to Witnesses and Victims. The issuance of this law is part of the solution to the growing and complex trafficking problem. This is also in line with the mandate in the United Nations (UN) Protocol, namely the UN Palermo 2002 (Saimima & Hakim, 2017).

In Indonesia, trafficking is one of the criminal problems that are difficult to overcome. Based on the press release submitted by the Witness and Victim Protection Agency (Indonesian: *Lembaga Perlindungan Saksi dan Korban*, LPSK) in 2018, human trafficking became the most dominant case in 2018. This is based on the number of applications received by LPSK throughout 2018. LPSK received a total of 1,720 applications. The petition is mostly dominated by trafficking cases, in addition to corruption cases, cases of sexual violence against children, and serious human rights violations (Online Republika, 2018). Data from the LPSK mentions that from 1,720 requests, trafficking cases reached 297 requests. This data does not include Indonesian citizens who are overseas trafficking victims, which according to the Police Department in 2018 the number reached 1,154 people (Online CNN Indonesia, 2018).

Meanwhile, the current condition is that trafficking victims often substantively do not get restitution rights for the suffering they experience. Where the fulfillment of the provision of restitution is very rare because victims do not know their rights and on the other hand, law enforcement officers do not inform victims of this right from the start, and even the fact that law enforcement officials do not know how to apply for appropriate restitution is also found.

In the framework of the concept of regulating the protection of victims of criminal acts, the first thing that must be considered is the essence of the harm suffered by the victim. The essence of the loss is not only material or physical suffering, but also psychological. This is in the form of "the trauma of losing trust in society and public order". Symptoms of the syndrome can include anxiety, suspicion, cynicism, depression, loneliness, and other avoidant behaviors (Muladi, 2002). While it should be substantively interpreted, victim protection must be interpreted from various perspectives, both from the perspective of criminal law, civil law perspective, and psychological perspective.

The occurrence of problems in the procedure for implementing restitution for trafficking victims is based on problems from the aspect of law enforcement and aspects of laws and regulations that govern the provision of restitution for trafficking victims. This is as regulated in the Criminal Procedure Code and Law Number 21 of 2007. The following includes Government Regulation Number 44 of 2008 concerning Compensation, Restitution, and Assistance to Witnesses and Victims.

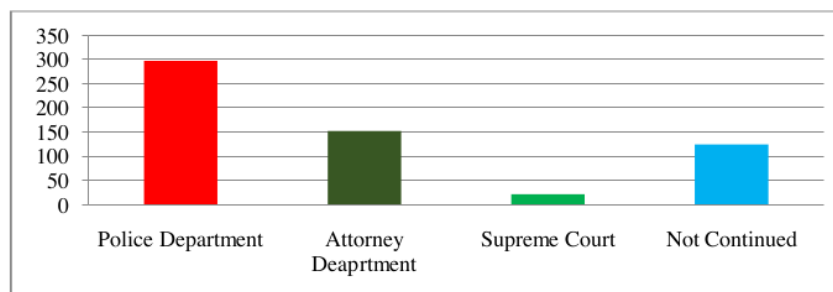
Thus, this paper intends to study several problems that arise, among others, in connection with the problems from the aspect of law enforcement and aspects of laws and regulations governing restitution for victims of trafficking.

2. Methodology:

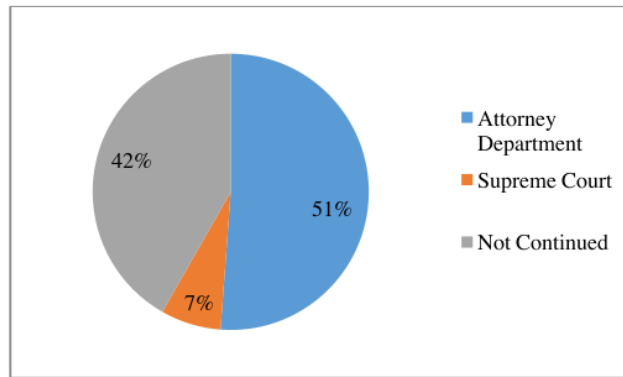
This study uses a normative research method that was conceptualized as an observable phenomenon in real life. This study is carried out by using the statutory approach through a review of the laws and regulations as well as regulations relating to the issue discussed, and in this case, the various rules of law which are the focus of research. Besides, the legal conceptual approach is also used. This research is started by describing the legal facts, then looking for a solution to a legal case to solve it. In this study, legal materials are obtained from the Criminal Procedure Code, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, and Government Regulation Number 44 of 2008 concerning Compensation, Restitution, and Assistance to Witnesses and Victims. Also, the secondary legal materials are obtained from books, journals, and other literature related to the discussion. The data collection technique that is deployed is library research by examining legal materials relevant to the research discussion.

3. Result of Research and Discussion:

Based on the 2018 Annual Report prepared by the Secretariat of the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons of the Government of the Republic of Indonesia, the authors made a graph regarding the number of trafficking cases that entered the Police Department, Attorney Department and Supreme Court in the period January - December 2018, as follows:



Graph 1: Trafficking cases submitted to the Police Department, Attorney Department and Supreme Court in January - December 2018 period



Graph 2: In Percentage

Source: <https://www.kemenpppa.go.id/lib/uploads/list/f3b9b-buku-laptah-2018.pdf>

From Graphs 1 and 2 above, it can be explained that the total number of trafficking cases that contained thousands of cases, as reported by the LPSK and the Police Department, turned out to be only 297 cases submitted to the Police Department, then from the Police Department, which increased. There were only 152 cases of prosecution by the Attorney Department or as much as 51% and subsequently entered the Supreme Court, it decreased to 21 cases or 7%. Thus, from the initial process at the Police Department of 297 cases, it turned out that there were 124 cases of trafficking that did not proceed to the next process or 42%. This means, from thousands of trafficking cases, it turns out that those which merely reach the Police Department level are relatively small. Even further from this, the number of verdicts against traffic actors at the Supreme Court level has decreased by only 7%.

There is a development in the world of criminal law globally, especially after several times of United Nation Congress which became the basis for a change in the orientation of the punishment, among others in the 9th United Nation Congress in 1995, in supporting documents relating to the management of criminal justice revealed the need for all countries to consider “*privatizing some law enforcement and justice functions*” And “*alternative dispute resolution(ADR)*” To solve the problem of overloading (case accumulation) in court (Arief, 2007, 2009). Based on these developments, when criminal law efforts (material) are encouraged, Indonesia should reform its rigid and imperative criminal system into a criminal system that puts forward humanitarian aspects that uphold justice, especially for victims of trafficking.

Gallander stated, “Trafficking is identified as a problem and decided that the law will be used to structure and enable at least part of the solution to that problem by providing a clear and organized explanation of the laws as it is, the capacity of those who are in a position to use international law to hold the state and others to account is strengthened” (Gallander, 2010).

In the case of trafficking, crime victims should be the main priority that must be protected, where ideally, when the victim is submitting a legal process can determine the size of the expected compensation. However, from several aspects, all the forms of revenge and compensation have been taken over by the state, the role of the victim is no longer considered (Reksodiputro, 1994). The position of a crime victim is not recognized by criminal law as a victim or party aggrieved due to a crime, victims of crime in criminal law and criminal justice processes only act as complainants (in ordinary offenses), complainants (in complaints offenses), witnesses (in criminal cases) as well as an interested party (pretrial case). Losses for crime victims are only assessed from the losses arising from acts against the law in the civil context (Mudzakir, 2011).

Problems in Providing Restitution for Trafficking Victims - Problems from the Aspect of Law Enforcement

In practical terms, Law enforcers are the party who is most responsible for protecting the victims in the criminal justice system, including but not limited to trafficking cases. However, it turns out that law enforcers themselves also

have different understandings in carrying out criminal justice systems, especially in terms of providing restitution to trafficking victims. This is motivated, among others, by the dualism in the handling of trafficking victims caused by the existing laws and regulations. On the one hand, law enforcers prefer to apply merger of cases as regulated in the Criminal Procedure Code, because it is considered to provide more legal certainty where the degree of the Criminal Procedure Code is higher than the Government Regulation, in this case, Government Regulation Number 44 of the Year. 2008, although the scope of restitution is limited in terms of material loss. Meanwhile, on the other hand, law enforcers can also apply Law Number 21 of 2007 and Government Regulation Number 44 of 2008, because it is considered that this mechanism can provide restitution that is larger in scope than that regulated by the Criminal Procedure Code.

Meanwhile, based on the provisions contained in the international world, damages suffered by victims of criminal acts can be requested for compensation as one of the rights of victims of criminal acts. Where the *United Nations Declaration on The Prosecution and Assistance of Crime Victims* in point 4 Part I-General Principles has emphasized the obligations of each country in fulfilling the rights of victims of crime (Atmasasmita, 1992):

“Reparation by the offender to the victim shall be an objective of the process of justice. Such reparation may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury, and psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the correctional process.”

The above shows that Indonesia as part of an international entity should be able to meet expectations *United Nations* that want compensation by the perpetrator of a criminal act to the victim should be the goal of the judicial process in every country. The compensation includes the return of the stolen property, payment of a sum of money for the loss, damage and injury, and psychological trauma suffered by the victim, including payment as compensation for suffering and assistance to victims, including victims of trafficking.

As part of the existing forms of compensation, among others, is the provision of restitution for trafficking victims. Where restitution is under the ‘Principle of Restoration in its Original Condition’ (*restitutio in integrum*) is an effort that the victim of a crime must be returned to its original condition before the crime occurred, even though it is realized that the victim can’t return to its original condition. This principle emphasizes that the form of recovery to victims must be as complete as possible and include various aspects that result from the consequences of crime. With restitution, the victim can be restored to freedom, legal rights, social status, family life, and citizenship, return to their place of residence, restore their job, and recover their assets (Atmasasmita, 1992)

The state through its legislative policy has begun to accommodate the aspirations of the victims trafficking by giving the right in the form of compensation that can be prosecuted against the perpetrator of the crime. Currently, there are several laws and regulations governing compensation for crime victims (restitution). However, in the implementation of granting restitution rights for trafficking victims, law enforcers, including the police as gatekeepers in the investigation process, often did not include the right of restitution for victims in the Investigation Report, as a result, the Public Prosecutor did not include it in the indictment and prosecution, thus eventually the Judge also did not decide to grant the right of restitution because it was not filed by the Public Prosecutor. Meanwhile, from the other side, judges can take a pro-active attitude towards trafficking cases that are perpetrated by the perpetrator and cause great harm to the victim, where it seems as if the judge is just a mouthpiece for the law.

The “noble” duty of the Judge should be more than just a mouthpiece for the law. This is in line with Article 14 paragraph (2) of the 1950 Provisional Constitution (UUDS) which reads: “No one can be prosecuted to be punished or sentenced, except because of the existing legal rules that apply to him “. The term rule of law (*Recht*) which of course has a broader meaning than just the “law” (*wet*), because the meaning of “law” (*recht*) can be in the form of “written law” or “unwritten law” (Moeljatno, 2008). Also, in implementing the criminal process, it is carried out by looking more clearly and comprehensively so that the real purpose of the punishment is achieved. As stated by Hogarth, “‘looking backward’ to the offense for purposes of punishment, to ‘looking forward’ to the likely impact of the sentence on the future behavior of the offender, on the potential offender in the community at large” (Hogarth, 1974).

The next problem from the aspect of law enforcement is regarding the mechanism of legal remedies that can be carried out by law enforcers. In the Law Number 21 of 2007, it is not regulated in a limitative manner regarding the authority of the Public Prosecutor in making legal remedies, both at the appeal and cassation level against court decisions in trafficking cases. However, Article 28 Law Number 21 of 2007 states that *“Investigation, prosecution, and examination in court proceedings in cases of trafficking in persons are carried out based on the applicable Criminal Procedure Law unless otherwise provided in this law”*. Thus, in this context, the Criminal Procedure Code also becomes procedural law in its implementation. This article will be detrimental to the victim in fulfilling his rights in obtaining restitution rights, for example in the case of combining criminal cases as regulated in Articles 98-101 of the Criminal Procedure Code. In this case, if a request for appeal is not filed, then the request for appeal against a compensation award is not permitted. The victim will be harmed because the victim must accept the verdict because if the defendant declares an appeal, the civil case will automatically follow the appeal examination. If not, then the victim is allowed to appeal against a claim for compensation or restitution for a decision deemed incompatible with the burden of losses suffered by the victim, both material and immaterial.

The next problem from the aspect of law enforcement is regarding who is the first party to have the authority to calculate the number of losses that can be prosecuted for restitution. The elucidation of Article 48 paragraph (1) Law Number 21 of 2007 stated that *“The mechanism for submitting restitution is implemented since the victim reports the case he has experienced to the local Police and is handled by the investigator at the same time as the handling of the crime committed”*. Furthermore, the public prosecutor informs the victim of the right to file for restitution along with the submission of the amount of loss suffered by the victim as stated in the prosecution (*requisitor*). This mechanism does not eliminate the right of the victim to file a lawsuit for his losses himself even though the Public Prosecutor has the authority to file for restitution, but the implementation mechanism has not been regulated by laws and regulations, such as how to regulate the size of the amount of restitution money submitted? Is it permissible if it has been filed by the Public Prosecutor, that the victims may file their restitution? The provisions of the article governing the mechanism of this restitution do not lie in the substance of the article but are only included in the Elucidation Article. As a result, the Police, Public Prosecutors, and Judges cannot immediately understand and integrate the provisions of this article in their duties.

The next problem from the aspect of law enforcement is regarding the authority to execute decisions on restitution. Generally, Law Number 21 of 2007 did not explain further about the role of the public prosecutor, especially the relationship between the public prosecutor and victims of trafficking. Also, the authority of the Public Prosecutor as executor of restitution decisions is not strictly regulated, because in Article 50 paragraph (3) Law Number 21 of 2007 only authorizes the Public Prosecutor to confiscate the assets of the perpetrator after an order is issued by the head of the court if the perpetrator does not pay restitution. This is different if it is based on the provisions contained in the Criminal Procedure Code, in which the Public Prosecutor is the party that can execute a criminal decision.

The Problems from the Aspect of Legislation

The main problem of giving restitution to victims of restitution is related to the dualism of regulating the provision of restitution itself. This is based on several provisions of laws and regulations that govern it, namely those contained in The Criminal Procedure Code, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and its implementing regulations as contained in Government Regulation Number 44 of 2008 concerning Compensation, Restitution, and Assistance to Witnesses and Victims.

The emergence of dualism problems in settling compensation (restitution) in trafficking cases can be explained, among others, in Article 98 paragraph (1) of the Criminal Procedure Code stated: *“if an act which forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, the head judge at trial at that person’s request may decide to combine the compensation case with that criminal case.”* The way for the recovery of victims’ losses that can be combined in a criminal case is a demand from the public prosecutor so that the judge can include it in the dictum of the decision.

Meanwhile, in Article 28 Law Number 21 of 2007 states, that investigation, prosecution and examination in court proceedings in trafficking cases are carried out based on the applicable criminal procedural law unless stipulated otherwise in this law so that the process of granting restitution also adheres to the principles of criminal procedural

law contained in KUHP, one of which is related to compensation and rehabilitation. Where in the provisions of the Criminal Procedure Code requires only a form of providing material compensation to the person who is injured in a criminal case, both concerning the incident of the criminal act itself and procedural problems in the examination of a criminal case.

The provisions of Article 28 Law Number 21 of 2007 is further regulated technically in Article 1 number 1 in the implementing regulation, namely Government Regulation Number 44 of 2008. Restitution is defined as *"compensation provided to a victim or family by the perpetrator or a third party, can be in the form of returning property, payment of compensation for loss or suffering, or compensation for certain actions."*

The scope of losses that can be sued not only from material losses but also covers immaterial losses. This is as regulated in Article 1 point 13 Law Number 21 of 2007, which is defined as *"the payment of compensation charged to the perpetrator based on a court decision which is legally binding for material and/or immaterial losses suffered by the victim or his heirs."*

Thus, the compensation referred to in the Criminal Procedure Code as confirmed in Articles 98-101 of the Criminal Procedure Code is different from the two regulations mentioned earlier. The compensation referred to in this Criminal Procedure Code is compensation in the civil context and the definition of compensation, in this case, is only limited to costs that have been incurred, accompanied by evidence of expenditure. Thus, immaterial losses are not included in the scope of losses that can be prosecuted through this case merger procedure, although it can be proven that these costs are used for purposes related to the impact of crime (Mudazkir, 2001)

The problem with the next aspect of the legislation is the mechanism of the parties that can submit requests for restitution. Based on the provisions contained in the Criminal Procedure Code, the compensation mechanism which requires the following has been regulated:

Article 98 paragraph (1) of the Criminal Procedure Code:

"If an act which forms the basis of an indictment in an examination of a criminal case by the District Court causes harm to another person, then the Presiding Judge of the trial at the request of that person may decide to combine the claim for compensation case with that criminal case"

- Article 98 paragraph (2) of the Criminal Procedure Code:

"The request as referred to in paragraph (1) can only be submitted no later than before the Public Prosecutor has filed a criminal charge. If the Public Prosecutor is not present, the request is submitted no later than before the Judge makes a decision."

Article 99 paragraph (3) Criminal Procedure Code:

"A compensation decision automatically has permanent legal force."

While in Government Regulation Number 44 of 2008 as the implementing regulation of Law Number 21 of 2007, the application for compensation is made by applying by the victim, family or their attorney to the court through the Witness and Victim Protection Agency (Indonesian: *Lembaga Perlindungan Saksidan Korban*, LPSK). What is meant by the court is a district court which has the authority to examine, try, and decide the criminal act in question. If the request for restitution is submitted based on a court decision that has obtained permanent legal force and the perpetrator of the criminal act is found guilty, the LPSK submits the request along with its decision and consideration to the district court for a ruling. If the request for Restitution is submitted before the claim is read out, the LPSK submits the request along with its decision and consideration to the public prosecutor. Then the public prosecutor in his claim included the request for restitution along with his decision and considerations to get a court decision.

The provision of restitution is not something that exceeds the authority in a court decision or the case of trafficking, because restitution is regulated in Article 48 paragraph (1). Law Number 21 of 2007 which reads: *"Every victim of a crime has the right to get restitution"*. In this case, the imposition of a sentence against the convicted person is not

sufficient to solve the case. Even though the imposition of punishment has fulfilled the principle of the purpose of punishment, namely to provide sorrow and to educate the perpetrator not to repeat his actions. But in another case, how about the recovery of the victim as the party most aggrieved by a criminal act. According to Primoratz, the punishment loses justification if it does not have any effect, or even only has a bad effect on the maker. "Punishment as suffering inflicted on the culprit for his crime, only thus can the good result of the whole proceeding, which provides its moral justification, be achieved." (Primoratz, 1989)

Meanwhile, other problems related to the forced power mechanism for granting restitution also did not have a maximum impact in terms of the implementation of this restitution. As contained in Article 50 paragraph (4) Law Number 21 of 2007 which reads, *"If the perpetrator is unable to pay restitution, the perpetrator will be subject to substitute imprisonment for a maximum of 1 (one) year"*.

If we look at the length of the sentence of substitute imprisonment, it seems that it is not proportional to the amount of loss that should be received by the victim. In many cases, convicts of trafficking cases prefer short confinement as a substitute for fines that often amount to hundreds of millions or even billions. For example in the East Jakarta District Court Decision in Case Number 55/Pid.Sus/2014/PN.Jkt.Tim., The defendant Rudi Yulianta was convicted in a trafficking case with imprisonment for 4 (four) years and restitution of IDR 120,000,000 to 4 victims on the condition that if the restitution is not paid, it is replaced by imprisonment for 3 (three) months. In practice, Rudi Yulianta (convicted) prefers imprisonment to replace fines (restitution) for 3 (three) months because he thinks this is lighter than paying a large fine (restitution).

The purpose of compensation is none other than to develop justice and welfare of victims and the measure of its implementation is to provide opportunities for victims to provide their rights and obligations as human beings. Therefore according to the writer, regarding Article 50 paragraph (4) Law Number 21 of 2007 it needs to be corrected, at least the imprisonment in lieu of fines becomes heavier as in the case of corruption for 20 (twenty) years so that traffickers have no other choice but to pay restitution to the victim. This is also in line with the creation Law Number 21 of 2007 who wants to protect trafficking victims.

The problem in the next aspect of statutory regulations is regarding the implementation of safekeeping of restitution. Article 48 paragraph (5) Law Number 21 of 2007 states, that restitution can be deposited in advance in the court where the case was decided. From this provision, it can be concluded that in Law Number 21 of 2007, there are regulations that do not support the spirit of the law to provide protection to victims, namely provisions regarding the voluntary safekeeping of restitution. Meanwhile, the elucidation of the article states that the safekeeping of restitution in the form of money in court is carried out under statutory regulations. This provision is equated with the process of handling civil cases in the form of consignment. Regarding the time the restitution money is deposited, it is carried out since the investigation stage. The word "can" in the article implies that there is no word "obligatory" so that restitution is deposited in court first. Instead, words can be changed to mandatory. Obligatory contains the meaning of firmness or imperative, meaning that statutory orders must be followed by anyone without exception. In other words, the perpetrator of the criminal act of trafficking is obliged to deposit money, where if it is not followed by coercive measures the provision will be useless. This is because if the perpetrator still does not deposit the restitution money in the court, there will also be no sanctions against the perpetrator. This means, one of the elements of the legal system, namely the application of regulations cannot be realized so that the malfunction of one of the elements of the legal system will result in the provision not being implemented effectively.

The problem with the next legislative aspect is the period for filing for restitution. Generally, Law Number 21 of 2007 does not specify the time frame for submitting restitution to be made immediately after the occurrence of trafficking until how many years the deadline is. This is different from some countries that have restitution programs, where these countries determine the period for filing restitution. The Netherlands, for example, determines the period for submitting restitution to the police for 3 (three) years from the occurrence of the criminal act, while there are no restrictions on filing applications. Another case in England, the police report as soon as possible since the occurrence of a crime and filing of applications since the occurrence of a crime (Eddyono, *et.al.*, 2006).

Apart from problems from the aspect of law enforcement and statutory regulations, another problem is that the public has not been thoroughly informed about trafficking. Often victims of crimes in the criminal justice system tend to be

neglected and given less attention in the context of recognizing their rights. Attention to victims is not commensurate with attention and recognition of the rights of perpetrators. Public distrust of law enforcers is also an issue that cannot be ignored, society thinks that the state cannot protect helpless victims. Aspects of crime prevention (*preventive*), attention to victims of crime, and community involvement and extra-judicial powers have not been a concern (Davies, *et. al*, 1998). Meanwhile, in principle, the criminal justice system in Indonesia partly refers to the Criminal Procedure Code, because the Criminal Procedure Code only emphasizes the Criminal Justice System in Indonesia is still on the repressive aspect of crime, with regulatory stress on the work of the apparatus in this system, namely the Police, Public Prosecutors, Judges, including Advocates.

In practice in almost all countries, the concept of restitution is developed and given to victims of crime for their suffering as victims of crime. In this concept, the victim and/or his family must get fair and appropriate compensation from the guilty person or the third party responsible. This compensation will include the return of property or payment for damage or loss suffered, compensation for costs incurred as a result of the fall of the victim, provision of services, and rights of recovery (Eddyono, *et.al*, 2006).

Based on the above problems, it requires strong efforts from stakeholders, including from the aspect of law enforcement to be able to understand the provisions for providing restitution for trafficking victims. Meanwhile, from the aspect of statutory regulations, the legislators from the government and the House of Representatives (Indonesian: *Dewan Perwakilan Rakyat*, DPR) should improve the existing provisions regarding the provision of restitution for trafficking victims. All these things require more comprehensive elaboration so that the purpose of legal protection in terms of providing restitution for trafficking victims can be achieved.

4. Conclusion:

1. Trafficking has a dominant position as an existing crime, even based on data from the LPSK in 2018, victims of trafficking have the top ranks who receive protection from the victim's side compared to other crimes, namely corruption, persecution, and other general crimes.
2. The problems from the aspect of law enforcement and aspects of laws and regulations governing the provision of restitution for trafficking victims have resulted in the resolution of trafficking problems becoming difficult to overcome. Whereas the existing legal provisions should be able to provide a sense of justice and legal certainty to victims in the form of providing restitution, even though this also cannot fully restore the victim's losses in both material and immaterial forms.
3. In addition to the need of the uniformity of understanding for the law enforcers regarding the settlement of compensation in the form of restitution for trafficking victims, harmonization of laws and regulations regarding restitution arrangements as contained in Law Number 21 of 2007. This is due to problems as contained in this law, among others the unregulated authority of the Public Prosecutor in carrying out further legal remedies, lack of information for the public and law enforcers regarding the ideal restitution filing mechanism, and the short duration of substitute imprisonment if restitution is not carried out by the convicted person.

References

- [1] Arief. B. N. (2007). *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Jakarta: Kencana.
- [2] (2009). *Mediasi Pidana: Penyelesaian Perkara Pidana di Luar Pengadilan*. Retrieved from <http://bardanawawi.wordpress.com/2009/12/27/mediasi-penal-penyelesaian-perkara-pidana-diluar-pengadilan/2009>.
- [3] Atmasasmita, R. (1992). *Penelitian Karya Ilmiah tentang Masalah Santunan Terhadap Korban Tindak Pidana*, Jakarta: Badan Pembinaan Hukum Nasional, Departemen Kehakiman.
- [4] CNN Indonesia.Com. (2018). *Polisi Ungkap 1.154 WNI Korban Perdagangan Orang*. Retrieved from <https://www.cnnindonesia.com/nasional/20180423175045-12-292934/polisi-ungkap-1154-wni-korban-perdagangan-orang>.
- [5] Davies, C. T. (1999). *Criminal Justice: An Introduction The Criminal Justice in England and Wales*, London: Longman.

- [6] Gallander, A. (2010). *International Law of Trafficking*, New York: Cambridge Press.
- [7] Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang Pemerintah Republik Indonesia. (2018). *Laporan Tahunan Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang*. Retrieved from <https://www.kemenpppa.go.id/lib/uploads/list/f3b9b-buku-laptah-2018.pdf>.
- [8] Hogarth, J. (1974). *Sentencing as a Human Process*, Toronto: The University of Toronto Press..
- [9] Moeljatno. (2008). *Asas-asas Hukum Pidana*, Jakarta: Rineka Cipta.
- [10] Kitab Undang-Undang Hukum Acara Pidana.
- [11] Kitab Undang-Undang Hukum Perdata.
- [12] Mudzakir. (2011) "*Tinjauan Umum Mengenai Efektivitas Ganti Rugi Pasal 98 KUHP, Kompensasi Bagi Korban Pelanggaran HAM yang Berat dan Restitusi bagi Korban*", (Makalah yang disampaikan pada diskusi terfokus tentang "Tinjauan mengenai Rezim Ganti Rugi Bagi Korban Kejahatan di Indonesia" yang diselenggarakan oleh Lembaga Perlindungan Saksi dan Korban di Hotel Red Top, Jakarta, Desember 2011).
- [13] (2011). *Posisi Hukum Korban Kejahatan dalam Sistem Peradilan Pidana*, *Disertasi*, Fakultas Hukum Universitas Indonesi..
- [14] Muladi. (2002). *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro.
- [15] Barda Nawawi Arief. (1984). *Teori-teori dan Kebijakan Pidana*, Bandung: Alumni.
- [16] Peraturan Pemerintah Nomor 44 Tahun 2008 tentang Pemberian Kompensasi, Restitusi, dan Bantuan kepada Saksi dan Korban.
- [17] Primoratz, I. (1989). *The Middle way in the Philosophy of Punishment Ruth Gavison ed., Issues in Contemporary Legal Philosophy; The Influence of H. L. A. Hart*, Oxford: Clarendon Press.
- [18] Reksodiputro, M. (1994). *Kriminologi dan Sistem Peradilan Pidana* (Jakarta, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia).
- [19] Republika. (2018). *LPSK: Permohonan Perlindungan Dari Kasus TPPO Meningkat*. Retrieved from <https://nasional.republika.co.id/berita/px97tx414/lpsk-permohonan-perlindungan-dari-kasus-tpo-meningkat>.
- [20] Ross, A. (1975). *On Guilt, Responsibility and Punishment*, London: Stevens and Sons.
- [21] Saimima, I. D. S. & Hakim, L. (2017). *Mekanisme Pengajuan Hak Restitusi Bagi Korban Tindak Pidana Perdagangan Orang*, Jakarta: Laporan Pengabdian Masyarakat Fakultas Hukum Universitas Bhayangkara Jakarta Raya.
- [22] Saleh, R. (1992). "*Arah dan Asas dalam Kebijakan Kriminalisasi dan Dekriminalisasi*". (Makalah yang disampaikan pada Seminar Nasional Kriminalisasi dan Dekriminalisasi dalam Pembaharuan Hukum Pidana Indonesia, yang diselenggarakan oleh UII, Yogyakarta, 15 Juli, 1992).
- [23] Eddyono, S. W., et al. (2006). *Masukan Terhadap Perubahan UU No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban*, Jakarta: Koalisi Perlindungan Saksi dan Korban.
- [24] Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang.

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